# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ELSIE NELSON	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,485
MAXUS PROPERTIES	)	
Respondent	)	
AND	)	
	)	
TRUCK INSURANCE EXCHANGE	)	
Insurance Carrier	)	

## ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on November 20, 1997.

#### ISSUES

The sole issue on appeal is whether claimant has established that she suffered accidental injury arising out of and in the course of her employment with respondent Maxus Properties.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments by the parties, the Appeals Board concludes that the Order by the Administrative Law Judge requiring respondent to provide preliminary benefits should be affirmed.

Claimant contends that she suffered a right knee injury from repetitive work activities, primarily climbing and cleaning stairs, in the course of her employment for Maxus. Maxus points out that claimant worked for another employer, Wilson Building

Maintenance, at the same time she worked for respondent. She did similar cleaning work for both employers. Claimant worked for Maxus from May 12, 1997, to August 15, 1997, and continued to work for Wilson until September 12, 1997. Respondent argues that claimant's date of accident should be the last date worked and medical benefits, therefore, should be paid by Wilson and its insurance carrier. Respondent relies on the Court of Appeals decision in Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

The Appeals Board, as indicated, agrees with the decision to require medical treatment be provided by respondent Maxus and its insurance carrier. First, the evidence indicates claimant's injuries were caused by duties climbing stairs and vacuuming stairs. Claimant did not vacuum stairs for Wilson and only occasionally climbed stairs when working for Wilson. In addition, claimant sought medical treatment and restrictions were imposed before claimant left her employment for respondent. The restriction against climbing stairs was the reason she left her employment for Maxus. The Board, therefore, considers it appropriate to treat the date of accident as the last day claimant worked for respondent Maxus Properties.

**WHEREFORE**, the Appeals Board finds the Order by Administrative Law Judge Nelsonna Potts Barnes dated November 20,1997, should be, and the same is hereby, affirmed.

Dated this	day of March 1998.

IT IS SO ORDERED.

### **BOARD MEMBER**

c: Joseph Seiwert, Wichita, KS Gary A. Winfrey, Wichita, KS Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director